

BREXIT, LEGITIMACY, DEMOCRACY AND SOVEREIGNTY

Prof. Aalt Willem Heringa, September 2016¹

*The demise of the EU and of globalisation and the resurgence of nation states?
Or: reconciling the triangle of democracy, sovereignty and globalisation?*

The 2016 Brexit referendum

The outcome of the June 2016 UK Brexit referendum came a bit as a surprise (for the leave campaigners as well as for the remain campaigners): 52% voted for leave; a majority of the elderly voters voted for leave; younger people did not vote at all or voted for remain; immigrants voted in majority for remain, and so did London and Scotland and Northern Ireland and Gibraltar. That is a big decision to take with such a small majority, or is it not? The referendum vote is the more interesting when we consider that since young people in a quite large majority voted for remain and elder people for leave. For demographic reasons, unless the young change their minds when getting older, in three years time it is not unlikely that another referendum may have the opposite outcome.... So who knows, when the negotiations will take long and people get fed up, or feel betrayed by the leave campaign, the

UK will make a U-turn... Speculation, but again, not an unreasonable assumption, is it? The outcome took most of the people as a surprise and as unexpected. Some voters indicated to have voted against Westminster because they never listen. Others motivated their vote as being opposed against EU or any more immigrants. Or they wanted their sovereignty back. The leave campaign dissolved after the referendum, for one reason suddenly being confronted with major issues. Farage said he would step down as leader of UKIP; Boris Johnson said not to be a candidate for the premier minister; Cameron stepped down; and Theresa May was elected within a few weeks as new party leader and appointed as prime minister, though she was a remainer. Labour is utterly divided. Officially Labour was in favour of remain (unlike in 1975 by the way, when the Tories voted for remain and Labour for leave..); this has to do with the finding that the UK labour legislation was reformed as a consequence of EU membership... And now UKIP is also engaged in a rather bitter struggle for the succession of Farage. Will it remain united or might it split in different factions? One, focusing on disaffected working-class Labour voters, for instance in the North of England; and another aimed at moderate voters? Farage has also criticised his own party by calling the leadership 'total amateurs'. It is even speculated that he may give up his membership...?

Many questions now sit on the agenda for the EU, and therefore also for The Netherlands, but also for the UK, and for politics and about referenda and the representative system and sovereignty and legitimacy and globalisation. Some authors have already for some years coined this as squaring the triangle of democracy, sovereignty and globalisation. And quite

¹ Deze Engelstalige bijdrage aan deze collectie van Brexit blogs is de tekst van een lezing gehouden in september 2016 voor alumni van de UM. Hoewel sommige kwesties later zijn verduidelijkt en vragen zijn beantwoord is de tekst een inleidende analyse van de Brexit als vraagstuk

a few people have argued that globalisation hinders democracy and sovereignty and that therefore these values must trump globalisation, or for that matter Europeanisation. And in The Netherlands voices can be heard, after the Ukraine association agreement referendum, to also have a referendum on a Brexit!

So, what I will do is make some comments about most of these issues; it is an academic lecture, isn't it, so I will try to balance the arguments; and yes many of the issues may lead to different outcomes. Let's however first of all set out what seems to be facts or given rules.

How about the immigration argument? The latest numbers I have seen was that in 2015 net immigration amounted to 33.000; half of which is EU origin, and the UK has seen specific rises in immigration in 2004 and 2007 after EU extension. And the beginning of 2016 immigration was still running high. Presently in total approximately 3.5 million EU migrants live in the UK (as opposed to 1.2 UK nationals living abroad in the EU). EU migrants are entitled to a residence permit after five years of residency, so the longer the effectuation of the Brexit will take, the more EU migrants may be entitled to stay...

Does the UK have to abide by the referendum?

Yes and no. Under the doctrine of parliamentary sovereignty the answer is no; Parliament may set aside the outcome. The present slim majority party, though an overall majority existed in the Commons for a remain, does not seem willing to set it aside, however, nor to organise a new referendum even though a petition has argued for it. And the new prime minister has said to go ahead and has appointed a special Brexit minister with a special Brexit department (under the leadership of a Brexiteer: David Davis). Rutte called Theresa May rightly Machiavellian when she put the burden of the Brexit on the shoulders of Brexiteers.....Next to David Davis that is Boris Johnson for Foreign Affairs and Liam Fox for trade.

It does take time however to build up such a department with a few hundred competent and experienced staff. And the same applies to the department of international trade. And to add the issues of conflict between the three...

However, in the UK people have argued that a Brexit request will need an Act of Parliament, a law adopted by the two houses of parliament and signed by the Queen. And that could take some time and one never knows what the House of Lords may do and vote. Why a need for an Act of parliament? That reasoning is based on two arguments. One is that in 1972 EEC membership was commenced on the basis of the European Communities Act and that this act may only be undone so to speak by another act. The second argument says that citizens' rights may only be taken away under the common law by statute. And since UK citizens have acquired quite a few rights as EU citizens, as a consequence of UK EU membership, these rights can only be undone by an Act of parliament, which is subsequently inviolable under the doctrine of supremacy of parliament. This dispute is also taken to the courts, and will also or most likely be determined by parliament, though the second argument may lead a court to find it justiciable, precisely because it resonates with this doctrine of supremacy of parliament.

The counterargument is that a service of an Art. 50 TEU notice falls within the Royal Prerogative. That is an increasingly weaker argument in my opinion. The Royal Prerogative indeed entailed a prerogative to conclude treaties, to engage in military battles and to conduct foreign affairs. However, increasingly limitations have been accepted. Treaties must now be laid before parliament before they may be concluded; and Cameron has also asked parliament's permission before engaging in a foreign military mission and when parliament voted against, he did not go ahead with it.

Can art. 50 TEU be commenced by the other EU member-states, who may dread the UK's lingering? No, they cannot. The only thing that may happen is that if the UK, whilst being a member-state, does not comply with EU obligations (who remain valid until the end of membership), may be sued for violating its treaty obligations.

How does a Brexit take place?

Under art. 50 TEU the procedure is dangerously simple and potentially extremely harmful for the exiting country, and in its effects possibly also for the EU. The simplicity is that it only takes a country to apply for its exit, after which 'divorce' or 'exit' negotiations will take place and, unless EU and exiteers mutually unanimously agree to take more time, the exit becomes effective after two years. A guillotine in many ways! And evidently, the EU in the context of the Brexit is EU minus UK, so 27! Why is this procedure potentially harmful: well, because of the automatic axe: after two years there is an exit even if there is no agreed upon divorce framework. That is rather a weak negotiation position for the UK I would say, the more so since art. 50 does not mention a withdrawal possibility of the exit application. So, once you have applied for it, the divorce becomes effective, even if no divorce settlement has been agreed upon!!

In that respect it is clever and sensible that the new UK prime minister is first of all now drawing up her divorce package with an inventory of what to do and what not and all accompanying issues and finances and implications. It was by the way not very clever for the UK government not to have done so itself at an earlier stage; it could also have helped to convince the electorate of all major implications and complications. But politically I can comprehend that Cameron was convinced of a remain and wished to push aside thoughts about an exit.

From the art. 50 perspective we can now see the dance between the EU 27 and the UK; the UK seeking to reach informal agreements and deals about its divorce package giving it some assurance that it will not be hit too dramatically by the art. 50 axe after two years. And then yes, even if the EU 27 do publicly say only wishing to negotiate after an art. 50 application, we may expect and witness UK ministers and the prime minister making visits to Berlin and Paris and other capitals to try to extract as many assurances as possible. Recently new prime minister May travelled to Poland and assured her counterpart that a Brexit would not affect the Polish immigrants already in the UK!

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However, as I mentioned, in quite a few EU member states elections will take place in 2017: France, Germany and The Netherlands: will concessions, if any, still be valid after the 2017 elections?

And what's more: after an exit all benefits from EU trade treaties with other countries will automatically end for the UK. And during membership, so until the Brexit, the UK may not conclude any trade deals with other countries. That will have to wait until after the actual Brexit. So, after a Brexit the UK will have to wait and see what trade deals might be concluded afterwards. And reading the newspapers I read that many countries appear reluctant on new trade deals....

Even during the Brexit negotiations all EU rules and case law and obligations will continue to apply, even against UK sentiments and maybe with a Qualified Majority vote in the Council, overruling the UK! Those two years or more will certainly be a difficult period for the EU and the UK, reason why, and also for businesses, to make the transition period as short and smooth as possible.

However, Brexit negotiations and their preparations will be tough and arduous and labour intensive; and so will the trade deals that the UK may have to make with countries and partners all over the globe, replacing the EU trade treaties that are presently in place. Trade negotiators will be needed shortly and many of them will have to do a tough job as it is estimated they have to work on some 58 trade deals to replace the ones the UK will forfeit by leaving the EU. And as I already indicated, a trade department will have to be build up, which does cost time and energy.

The UK will have to apply for WTO membership, after the effectuation of the exit: presently the UK is a member of the WTO as an EU member state! And accession might take time. And domestically approximately 12.000 EU rules apply to the UK. In so far EU rules, specifically directives, have been implemented in national law, there might not really be a hurry, since they can remain in force as what they are now, that is also as national law.

But they probably will have to be checked and for regulations, which do not need as directives do, implementation to enter into force, it will have to be decided what to do with them: copy them in national law or scrap them. And what about the case law of the ECJ interpreting and having interpreted them in the past: will such interpretation remain part of the EU rules that may be decided to remain UK law? As you can imagine, this is a huge work package which also engages the addressees, the companies and citizens, that have benefited from them or stand to loose.

In that perspective two years for a Brexit is not all that much. And then there is also the work to be done on a divorce package with the EU. How to regulate after a Brexit relations between the divorcees. Freedom of movement of services (NB: the UK financial sector), and capital and goods (as the UK does wish), but without the free movement of persons? That would go against the deals the EU has with Norway and Switzerland for instance. A few years ago the Swiss rejected in a referendum free immigration for EU citizens: the EU

retaliated and told the Swiss that all other benefits and freedoms would be cancelled if the Swiss would go ahead with suspending or freezing or limiting free movement of persons. And that is where the situation presently stands. A deadlock. And how would Norway and Switzerland react if the UK would have a more favourable deal in this respect?

From the EU perspective administrative issues about pensions, or relocating EU agencies will have to be dealt with, as well as the finances of multi-year projects in the UK. In that respect the Treasury has already promised to guarantee for recipients of EU funds that it will pay the funds, including farm subsidies until 2020.

And the other EU states, the remaining 27? Well, they may not be too pleased since a Brexit may have budgetary consequences for them: more to contribute to the EU or less to receive, both options are not really that desirable, specifically in election times and EU scepticism.

And a few days ago I discovered another nice aspect and legal nicety: you do probably still recall that in the fifties of the twentieth century the EU started with three organisations: ECSC, EEC and Euratom. The first two merged into the EU; but the third is separate apart from the fact that it utilizes the EU institutions and that all EU member states are a party to Euratom. And what is more; the Euratom treaty does not have an exit clause. So what's next after a Brexit? The UK still a member of the Euratom, which is then governed by institutions in which the UK does not sit?

May an art. 50 TEU notice be revoked? Well, art. 50 TEU does not mention such withdrawal as a possibility. So it can be argued both ways: that it cannot or that it can. In the end it will be for the ECJ to decide whether it is possible and under what conditions, if it would come that far. The 'cannot' perspective may be defended by simply referring to the text of art. 50 TEU, which does not mention the possibility of revoking an art. 50 notice, and which only stipulates that in the end withdrawal is a fact after two years, or so much later as agreed upon, with the possibility of a withdrawal agreement.

The can perspective may be that a valid notice remains only valid as long as the government does not revoke it, and that a revoked notice constitutes a non-valid notice. And furthermore, that all 28 member-states are the masters of the treaty and may interpret the treaty within reasonable margins and that the two parties, the 27 + the UK, may conclude as an agreement NOT to effectuate a withdrawal.

The withdrawal agreement would require a qualified majority among the remaining 27; the new regulatory framework for the relationship between UK and EU may take more years to negotiate, but will require unanimity among the member states.

When may we expect the effectuation of the Brexit. Well, recent messages suggest that the application may be made in the beginning of 2017; at the earliest the Brexit can then be expected the beginning of 2019; however some signals have been given that the UK government aims at the end of 2019. That could be realised even with an application early 2017, but it would require the consent of the EU 27, and that is not at all certain. A safe bet would therefore be that the art. 50 notice is made in spring 2017, a year after the referendum, and may become effective in three years from now. I recently read that bookmakers in the UK reckon that there is a 40% chance that the UK will not leave the EU before 2020!

Considering all the odds, a new idea has been put on the table which is to seek a temporary regime, after the entry into force of the exit, allowing the UK government to take some more time for definite and final arrangements. And such an interim package might be a temporary membership of the European Economic Area (Norway...); however, will such a temporary option satisfy the campaigners for Leave? The benefit is evident: buying time and keeping access to the EU's single market. The downside is to accept free migration; to accept all single market rules, existing ones and new rules (without having a say in these new rules!). And that is not what the LEAVE Campaigners wished for. And how long will temporary be?

Member states which might give some thought to leaving the EU as well, at least can learn from the UK lessons, which are:
thoroughly prepare a leave package and a to do list; build up and hire expertise; or accept the consequences that the periods of uncertainty will last a long time.

What will be the UK domestic constitutional consequences? There could be quite a few. The first we have already witnessed; the resignation of Cameron; the election of a new Tory leader; the composition of a new government, the instability of Labour as a full opposition party. To these political aspects one may add the political issue of having a split country, split along many lines of difference: class and income; rural versus city; Scotland and Northern Ireland v England; young versus old.

It has become increasingly clear in many countries that, unless compensatory measures have been taken, blue collar workers seem to have lost more by globalisation, and Europeanisation and immigration. The UK plumber or factory worker may have less or no work since his work has been taken by a Polish plumber or has been sent abroad, and he does not benefit from the EU since he does not benefit from ERASMUS schemes, nor does he travel that much abroad to the continent. So, in the UK some regions, former industrial parts, have not really been seen to benefit from open borders and trade. The country as a whole may have, but in different regions and different industries and businesses. This class divide or divide in benefiting from globalisation splits societies. The more so when we see the splits between young and elderly. 73% of voters between 18-24 wanted to remain, as opposed to 40% of those over 65. And young people move to cities where they are confronted with heterogeneous societies.

The prediction therefore is that in ten years time a majority of the votes would definitely be for a remain. That is certainly, if this is indeed the trend, a sorry event. Governing is also caring for the future, isn't it?

The territorial divide is also potentially risky. Scotland is predominantly SNP and in 2014 narrowly voted against independence after last minute promises by Cameron for more autonomy and devolution. The Scottish prime minister Nicola Sturgeon has already made it clear that a Brexit could lead to a new referendum (and Theresa May has said she would oppose such a referendum) and what if then the Scottish will vote for independence and to remain in the EU or be admitted to it? And how about Northern Ireland and its historical links with Ireland? Will there be a border (an external EU border that is) between the two parts of the same island. That border would be dangerous for the relationships between

nationalists and unionists. Nationalists who voted overwhelmingly for remain would suddenly see open borders to be closed. Recent news had it that the Irish prime minister and May had agreed upon not having hard borders with passport control. How would that benefit the EU? And immigration through Ireland, Northern-Ireland into the UK? And there is furthermore also the issue of Gibraltar; they voted almost unanimously for remain: 19.000 v 800! A prosperous peninsula but also with many intensive economic relations with across border Spain. And discussions have already started with Scotland as to how to remain in the EU.

The political class or the political arrangements seem to have lost the younger people; they may have thought that facebook or Instagram are the new tools of their generation, but it turned out that old-fashioned voting for an issue may be more important. How do referenda and the representative UK democracy relate after this fourth nation wide referendum. Will and do referenda add to the legitimacy of parliament and the government; it does not look like it, or at least the government and the political parties have underestimated their lack of contact with their voters and how voter sentiments have played out. Simultaneously this referendum shows how difficult it is to have a referendum about such a complex issue with so many different arguments and reasons to vote one way or the other. No matter what, as in our country with the April 2016 Ukraine referendum the government campaign was terribly organised; arguments and data were not well presented. If the referendum was a vote against immigration: interestingly, the EU immigrants for the main part have jobs and contribute in taxes to UK society and economy. If it is a vote to take matters in one's own hand, the own parliament, will that endeavour really be successful?

A Brexit will evidently have consequences for immigration into the UK and residence for EU citizens. However, it is as yet unclear what a Brexit will mean for the EU residents in the UK and abroad in the EU. A discussion is now on the table to allow (at least those EU citizens in the UK prior to 23 June 2016) to stay if the EU will grant similar rights to UK nationals living abroad in the EU. So which rights will be granted and to whom, will be part of the EU / UK negotiations, although some people argue that EU nationals in the UK who have been granted residence after five years will be entitled under English law to stay and keep their residence. However, that still leaves the others, who have not been granted residence after five years, to reside on UK territory under EU rules. And if the Brexit is to be postponed the group with residence entitlement will only grow.

Economically the UK have not suffered yet: apart from the pound, but that may have helped exports. However, the national bank has stepped in and many economists and also the prime minister do expect hard times ahead. And forecast growth by the Bank of England for 2017 has been adjusted from originally pre Brexit referendum 2.3% until now 0.8%.

What may a Brexit entail for the EU?

That first of all depends on the divorce package! However, symbolically it harms certainly the EU that a major member state leaves. It may create expectations in other states and among EU scepticists. It will not quell unrest about the EU. Unless: those EU scepticists see

that an exit is a bad deal, that maybe the UK may be relatively well off, but that smaller states who desire an exit will have less bargaining clout and may be much worse off. This political perspective will be on the back of the minds of the EU and the 27 member states the next few years and will influence their choices. That is simply human: why reward a state which dislikes us and wishes to quit our company and has blamed us for all evils? And has also contributed to the perceived bad functioning of the EU. It does not contribute to the public eye if UK prime ministers are being seen and heard accusing the EU for the UK's bad deals. On the other hand: the EU also has an interest in securing a good deal with the UK, ensuring trade, exports and imports, collaboration in fighting crime and terrorism, and a loyal partner in our globalised world where China, Russia, US, South America and others are partners and above all competitors.

Is a Nexit possible?

In my opinion no. I do not see as likely or probable that the Dutch legislature will initiate or vote for an exit. It also seems unlikely that it will enable a referendum to be held as it did in 2005 about the EU Constitution. In the UK, the referendum was first of all suggested and then promised by Cameron to silence opposition within his own party, hoping to force EU reforms and to have a clear mandate from the electorate, strengthening his position as party leader. Such strategy I do not see occur in this country. May a referendum be asked for or forced under the present (now: former, since it was repealed in 2017) referendum law, which also enabled a referendum about the Ukraine accession treaty? That avenue is not possible. A referendum can only be held about statutes adopted by the legislature. And for the immediate future no new EU treaty is foreseen, and if it will take place, a new treaty may be voted down indeed, but that simply means that status quo remains. No exit therefore.

May a Brexit lead to a referendum, some people have asked. Again my answer is in the negative: it may not, since the conclusion of the art. 50 procedure will lead to the Brexit, and is not dependent on a Dutch referendum or any other sort of approval by other member states. An agreement between EU and UK is sufficient. So no Nexit, in the near future.

But how about referenda in order to frustrate as has been suggested the EU and its workings? The only possibility here is to have referenda on laws or on treaties. Could referenda be applied for any time the Dutch parliament adopts a law implementing EU directives and EU rules? No, that option is excluded in the referendum statute (which has been repealed in the meantime). The most probable option was to have Ukraine like referenda about the Dutch parliament agreeing to an EU treaty, which happens to be a mixed treaty, that is not an exclusive EU treaty. The CETA, the trade treaty with Canada, or TTIP with the US. If and only if and so far as these treaties are mixed agreements, which could seriously be doubted, the Dutch parliament has a say, and for that matter the Dutch people by referendum, but this say then applies only to those (small) parts that are not exclusive EU, And trade is exclusively EU.....

Is the EU indeed incompatible with democracy or sovereignty.

This is a complicated issue, since any answer depends on our definitions of democracy and sovereignty, and requires an answer whether the EU may be considered a democracy in its own right. The answer also hinges on the issue whether democracy can be considered

possible on EU level. Some people say that it cannot, since a truly European demos is missing, and since there is no EU wide debate and people. And in this line of argument a democracy may only work within a more coherent body of people and organisation.

Other people point at the European Parliament and its regular five year elections and role in establishing and keeping in office of the Commission, its powers of oversight and law making powers, despite the obvious flaws such as the lack of the right of initiative and the limited oversight vis a vis the Council, the ECB and its lack of powers within the EMU. And how about sovereignty? Well, it depends here to a large extent how we define sovereignty. If the definition is that we may also exercise our sovereignty on the EU wide level, sovereignty does exist. But if we consider sovereignty to be linked only to the nation-member-states, indeed states have ceded exercise of their sovereignty partially to the EU. But also sovereignty itself? Probably not: art. 50 TEU and the UK referendum show that sovereignty is not infringed or violated by the EU since states voluntarily join and may voluntarily leave. In this definition sovereignty is not at all at stake! It is indeed alive and exercised by the UK and its people.

Legally we only have an issue when we define sovereignty as meaning that states may not, be it temporarily, transfer sovereign rights to another supra-national organisation. This issue and this starting point raise the question as to what sovereign rights are and whether there is a core which may never be transferred, or only to some extent? Defense? Well we are a party to NATO with its art. 5 obligation. We participate in foreign missions under direction or command of another state or organisation; we collaborate in joint troops and command structures. Monetary issues, such as the euro currency? Budget, with, in the EU the balanced budget obligations? Foreign affairs?

And this is only a legal debate. Let's consider the issue from a more practical perspective. Are we really sovereign when legally we are free to exercise all these powers, or do we then operate under as many, and maybe more constraints, simply because we are part of the world: rating agencies influence our economy and budget; before the euro our national currency was predominantly linked to the German currency; big players, big countries determine product standards and as a small country one simply has to follow and abide by them; international crime and terrorism may only be combated with international collaboration and this also applies to environmental issues and climate change.

The de-facto question is therefore, are we more or less influential by transferring parts of our sovereignty to a larger organisation, of which we are a member and in which we may exercise our influence as a member? So, maybe we are now more sovereign in the EU, than before? Having now the possibility to sit, debate, discuss and vote on issues that were beyond our reach before the

EU? No matter what, the assessment of this argument differs for major and big states as opposed to smaller and small states, evidently.

How to bridge gaps between those in power and the governed?

Or: referenda and representative democracy: can the people never be wrong?

The Brexit referendum and also the Dutch Ukraine referendum, both in legal terms consultative referenda show oddities and issues that seem relevant. The first idea behind a

referendum is that in a democracy the people ought to have the final say and being able to determine their own destinies. How does that relate to a representative democracy? Can a referendum result be overruled by parliament, possibly after new elections? This idea has been rejected in the UK by the new prime minister but legally exists as an option. Is it wise and legitimate to do? That remains to be seen: in August the UK central bank published adverse effects of the referendum for the UK economy. Citizens, as we witness in elections, do change their mind, so why not accept the fact that this may also occur in referenda? The doctrine of UK sovereignty holds that parliament can do and undo anything. So why not define the sovereignty or democracy of a people, of an electorate, as holding that it may do or undo anything? I can very well, in legal terms envisage that new elections in the UK may change the game. And then the question is what will politically speaking, happen. In that perspective, I am not at all negative about the attempts of Rutte to try to accommodate the Ukraine referendum into political results, because that might even better meet the concerns of the voters than simply refusing to ratify the Association Treaty.

Simply refusing to ratify means that the trade part of that treaty will simply continue, also for us as The Netherlands, that other EU states might continue and that we will be left on the outside, condemning the treaty, but totally ineffective and symbolic. What we witness though is, and I will return to that issue shortly, is a legitimacy gap between electorates and their national governments and parliaments. That is not something a referendum will fix I am afraid.

A referendum may bring it to the fore, however. But referenda in the EU context also have a potential collateral disadvantage: they may not lead to the result the national population wished for or hoped for. We have seen that in the Greek referendum in 2015 rejecting the aid package conditions imposed upon them. The conditions were imposed. We may see it in the Ukraine referendum: the association agreement for the main part will simply remain effective. Will we also see it in the UK context with the Brexit referendum, when after a Brexit, opinion will shift when disadvantages become clear or the Brexit negotiations turn out to be potentially disastrous and its effects become noticeable?

Is the EU concept of dual legitimacy feasible and a possible avenue?

One of the avenues to narrow the gap between citizens and the EU and to build bridges has been to work along two lines, which we call: dual legitimacy. First of all we have regular direct five year elections for the EP, and the EP has acquired a role in the formation of the Commission and its president; it may adopt votes of censure against the Commission. Furthermore, the EP is part of the EU legislature and exercises oversight functions vis a vis the other EU Institutions: Commission, Councils, ECB.

The second avenue of legitimacy is through the national parliaments. That works, or is supposed or intended to work in two ways. One is that national parliaments may hold their ministers accountable for their actions and votes in the Council; parliaments may, constitutional law permitting, mandate their ministers or a scrutiny reserve may be imposed.

The second avenue is also for national parliaments is to engage on the EU level. Either with the Commission in the so called political dialogue or by issuing yellow or orange cards. With these cards national parliaments may object, on grounds based upon the notion of

subsidiarity only, against rules proposed by the Commission. That has now occurred three times: the first was successful, because the Commission withdrew its proposal because of different reasons. The second is partially successful: the Commission amended its proposal, and the third was finally accepted after a compromise was reached in the Council. National parliaments may also work with other parliaments to prepare joint points of view, to learn or to be better informed. One of these activities is the annual inter parliamentary week, with attendance of representatives of the EP and all 28 national parliaments.

Does this dual legitimacy, and specifically the added powers of the EP, its newly acquired role in overseeing the Commission, and the national parliaments' powers in overseeing their ministers and communicating with the Commission, truly add to the legitimacy of EU policies? If it did, it did not show in the Euro barometer or in a decline of Euro scepticism, or in a greater popularity of the EU. And this oversight and EU legitimacy roles of national parliaments are potentially risky, since these parliaments operate on national arguments and for a national electorate; not all parliaments can have it their way. If some object, their objections may be overruled: what will that do for their legitimacy. Recently it was predicted that a Europe of feuding national parliaments may be more unpopular than the present Europe. And also: it could be argued that some national parliaments, since they sit in larger countries with more powerful governments, may be more powerful and have more say than other national parliaments.

What will that do for coherency and an EU identity?

But for what it may be worth: national parliaments and governments do not well either. Which is a scarce consolation, if you ask me. Surprisingly however, and it may come as a surprise to you: but overall the EU enjoys greater confidence than national politics, governments and parliaments. And the odd thing is: people are proposing to leave the EU but not to leave their own states or to abandon their own government.

In 2015 31% had confidence in their national government and 31% had confidence in their national parliament. (a year before that was 28%!!). The EU scored 40% in 2015 (after a dismal 31% a year earlier, which was the lowest ever). But the EU has always done substantially better than national politics!

By the way who score much better nationally: army, police and legal institutions, do much better.

Is dual legitimacy therefore a tool to boosting legitimacy or a tool to increase ineffectiveness and national sentiments against the EU, or to block EU measures?

Is it the fault of the EU (them) or... of us?

After the referendum in the UK one of the Conservative ministers said that the EU was totally ineffective and that they, the EU, did not have their act together and were overregulating the markets and were ineffective in boosting economic growth and fighting unemployment and boosting the markets. What struck me in this analysis and statement was the total absence of self reflection, for:

who is the EU and who decides in the EU, yes indeed the

Commission, the European Parliament, but also the European Council and the Council of Ministers. If and when the EU is not quick or resolute enough to fight a crisis or unemployment or immigration or insecurity, it is also us, that is our own ministers and prime ministers who are to blame. Failure or success of the EU comes with the participation and loyalty and efforts of the member states. Them is in fact us.

What next?

That is the hardest question. Because there are so many scenario's and there are so many events which may occur and could influence or change the whole game. For now the UK takes its time to work on its response and negotiations bid, where it has to play chess domestically (industry, the city, trade unions, political parties, Scotland, Northern Ireland), with the EU and its members, and with global (trade) partners. From their perspective that is a sensible approach.

Will we then have a Brexit in two or more years? Likely, if and when the art. 50 application will be submitted. Will there be a deal after two years after the submission of the application. I suspect so, since it is not really in anyone's interest not to have a deal, but politics is work by humans so we may not have a deal, or only a last minute deal, or someone stops the clock or finds a loophole to continue negotiations, or invents another trick to seek a solution which is good for the remaining 27 and the UK. That time period will leave its marks. Countries will try to lure away UK based businesses and services; the corporate world will not like the insecurity; the UK political parties may or may not reappear or resurface unscathed. Politics in the UK may not be as before.

The EU may resurface stronger or weaker. Stronger because it can leave the endless bickering with the UK behind it (but who knows, new bickering or dissident member states will emerge) or the Brexit will show the EU's weak spots and make the EU less powerful on the global scale. The more so when trade treaties fail, a new crisis, financially, economically, immigration wise, security wise, erupts, and states will seek shelter behind their own national borders. That will certainly not soften a crisis but exacerbate it, which may leave us in a vicious circle or downward spiral.

No matter what, the Brexit has provided us with quite a few issues to ponder and to work on positive ways to seek forward looking solutions. The outside world is not going away, so it would be stupid to retreat behind our own national borders. Destroying the EU is not going to make the world safer, nor better. The message is to find ways how to do justice to legitimacy, democracy, localism, sovereignty, globalisation and to find a balance between those aspects. There is no quick nor easy fix. But destruction of the EU or hiding behind one's own borders and sticking our head in the sand, has never been a solution to real time problems.

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